

Eric Brooks
MOORE, COCKRELL,
GOICOECHEA & JOHNSON, P.C.
145 Commons Loop, Suite 200
PO Box 7370
Kalispell, MT 59904-7370
406-751-6004
ebrooks@mcalaw.com
Attorneys for Defendant
Symetra Life Insurance Company

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

TODD STEPHAN BOEHMLER, Plaintiff, v. SYMETRA LIFE INSURANCE COMPANY, and BROWN & JOSEPH, LLC, an Illinois limited liability company. Defendants.	Cause No. _____ NOTICE OF REMOVAL
---	--

Defendant Symetra Life Insurance Company (“Symetra”) gives notice of the removal of this civil action styled *Todd Stephan Boehmler v. Symetra Life Insurance Company and Brown & Joseph, LLC*, Montana Nineteenth Judicial District Court, Lincoln County, Cause No. DV-22-102, to the United States District Court for the District of Montana, Missoula Division. In support of this Notice of Removal,

Symetra states:

1. On June 23, 2022, Plaintiff Todd Stephan Boehmller filed a Verified Complaint and Demand for Jury Trial against Defendants Symetra Life Insurance Company and Brown & Joseph, LLC, in the Montana Nineteenth Judicial District Court, Lincoln County, Cause No. DV-22-102. The Clerk issued a summons to Symetra on June 23, 2022. A case register for Lincoln County Cause No. DV-22-102, dated August 4, 2022, and copies of all filings in that matter, are attached hereto as Exhibit A.

2. Plaintiff delivered a copy of the Complaint and Summons issued to Symetra on July 6, 2022 to Symetra's home office. Symetra disputes that this is proper service, but is filing this removal regardless of the deficiency.

3. Plaintiff filed a Notice of Dismissal of Defendant Brown & Joseph, LLC on August 3, 2022. Exhibit A, pp. 14-15. The Lincoln County District Court issued an Order dismissing Defendant Brown & Joseph, LLC with prejudice on August 4, 2022. Exhibit A, p. 16. To the extent it is required, Defendant Brown & Joseph LLC consents to this removal.

4. Symetra removes this case because the Court has diversity jurisdiction and federal question jurisdiction.

a. Paragraph 1 of the Complaint (Exhibit A, p. 2) alleges that Plaintiff is domiciled in Lincoln County, Montana, making him a citizen of

Montana. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“The natural person's state citizenship is then determined by [his] state of domicile”).

- b. Symetra is an insurance company formed under the laws of Iowa and has its principal place of business in Washington as well. Symetra is therefore a citizen of Iowa and Washington.
- c. Brown & Joseph, LLC has been dismissed from this case with prejudice and its citizenship is therefore irrelevant to diversity jurisdiction.
- d. To the extent Brown & Joseph's citizenship is considered, it is a Delaware LLC owned by a series of other Delaware LLCs, which is ultimately owned by limited partnership. None of the partners in the limited partnership are citizens of Montana.
- e. In any event, the Court need not consider the citizenship of Brown & Joseph as Plaintiff fails to state a viable claim against Brown & Joseph. See *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th 1998); see also *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921). Specifically, the sole factual allegation against Brown & Joseph is that Symetra's knowledge is imputed to Brown & Joseph. (Compl. ¶ 4.) This is insufficient to state a claim under the FDCPA. See, e.g., *Offril v. J.C. Penny Co., Inc.*, 2009 WL 69344, at *3 (N.D. Cal. Jan. 9, 2009).

f. Plaintiff alleges he has “endured pecuniary injury in the amount of \$160,841.58.” Exhibit A, p. 4 (Compl. ¶ 15.).

g. Accordingly, the parties are completely diverse and the amount in controversy exceeds \$75,000. This Court thus has diversity jurisdiction under 28 U.S.C. § 1332.

h. This Court also has federal question jurisdiction under 28 U.S.C. § 1331 because Plaintiff has asserted a claim under the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.*

5. Symetra shall provide, pursuant to 28 U.S.C. § 1446(d), written notice to all adverse parties of this Notice of Removal and shall file a copy of this Notice of Removal with the Clerk of the Montana Nineteenth Judicial District Court, Lincoln County, as required by Local Rule 3.3(a)(1).

6. Symetra gives notice that further proceedings in this matter before the Montana Nineteenth Judicial District Court, Lincoln County, are discontinued, and this civil action is removed to the United States District Court for the District of Montana, Missoula Division.

DATED this 4th day of August, 2022.

/

/

/

MOORE, COCKRELL,
GOICOECHEA & JOHNSON, P.C.

/s/ Eric Brooks

Eric Brooks
145 Commons Loop, Suite 200
PO Box 7370
Kalispell, MT 59904-7370
406-751-6004
ebrooks@mcalaw.com
Attorneys for Defendant
Symetra Life Insurance Company

CERTIFICATE OF SERVICE

I certify under penalty of perjury that a copy of the foregoing document was served electronically to all interested parties by ECF on this 4th day of August, 2022.

MOORE, COCKRELL,
GOICOECHEA & JOHNSON, P.C.

/s/ Eric Brooks

Eric Brooks
ebrooks@mcalaw.com
Attorneys for Defendant
Symetra Life Insurance Company